No. 35083-5-III

COURT OF APPEALS

DIVISION III

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

RANDALL G. BRYANT, APPELLANT

APPEAL FROM THE SUPERIOR COURT

OF SPOKANE COUNTY

BRIEF OF RESPONDENT

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I. APPELLANT'S ASSIGNMENT OF ERROR

The evidence was insufficient to sustain the conviction for possession of a stolen motor vehicle.

II. ISSUE PRESENTED

Admitting the truth of the State's evidence and drawing all reasonable inferences from that evidence, was there sufficient evidence presented from which the jury could find all of the essential elements of possession of a stolen motor vehicle beyond a reasonable doubt?

III. STATEMENT OF THE CASE

Sometime during the month of November 2016, Blaan McMahon's 1991 Acura Integra was stolen from his driveway. RP 76. No one had Mr. McMahon's permission to drive or possess his Acura. *Id.* Mr. McMahon had two keys to the Acura, neither of which had been left in the car. RP 78.

Approximately a week later, on November 24, 2016, Officer Winston Brooks of the Spokane Police Department was on patrol, driving north on Monroe. RP 78, 88-90. A vehicle pulled out in front of him. RP 90. When Officer Brooks ran the vehicle's license plate on his computer, he discovered the license plate belonged to a Ford, while the vehicle he observed was a blue 1991 Acura. RP 91. He pulled the vehicle over and found Randall Bryant, the defendant, in the driver's seat. RP 91,

92. Mr. Bryant was detained while Officer Brooks investigated. RP 96. A check of the vehicle identification number (VIN) revealed the vehicle had been reported stolen. RP 96-97. There was a key in the ignition; a key Mr. Bryant later handed to Officer Brooks. RP 98-99, 102. The key was a house key, not a key to an automobile. RP 102-103, 117.

Mr. Bryant was charged with one count of possession of a stolen motor vehicle, under RCW 9A.56.068. CP 1. Mr. Bryant was found guilty after a jury trial. CP 24; RP 153. Mr. Bryant now appeals. CP 76-77.

IV. ARGUMENT

ADMITTING THE TRUTH OF THE STATE'S EVIDENCE AND DRAWING ALL REASONABLE INFERENCES FROM THAT EVIDENCE, THERE WAS SUFFICIENT EVIDENCE PRESENTED FROM WHICH THE JURY COULD FIND ALL OF THE ESSENTIAL ELEMENTS OF POSSESSION OF A STOLEN MOTOR VEHICLE BEYOND A REASONABLE DOUBT.

A sufficiency of evidence challenge is reviewed de novo. *State v. Rich*, 184 Wn.2d 897, 903, 365 P.3d 746 (2016). The standard of review for a sufficiency of the evidence assertion in a criminal case is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found each element of the offense proven beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979); *Rich*, 184 Wn.2d at 903. A defendant challenging the sufficiency of the evidence admits the truth of the State's evidence and

all inferences that reasonably can be drawn therefrom. *State v. Witherspoon*, 180 Wn.2d 875, 883, 329 P.3d 888 (2014).

The State bears the burden of proving all the elements of an offense beyond a reasonable doubt. *In re Winship*, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970); *Rich*, 184 Wn.2d at 903; U.S. Const. amend. XIV; Wash. Const. art. I, § 3. The State may establish the elements of a crime by either direct or circumstantial evidence. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980); *State v. Brooks*, 45 Wn. App. 824, 826, 727 P.2d 988 (1986). "Appellate courts do not hear or weigh evidence, find facts, or substitute their opinions for those of the trier-of-fact. Instead, they must defer to the factual findings made by the trier-of-fact." *Quinn v. Cherry Lane Auto Plaza, Inc.*, 153 Wn. App. 710, 717, 225 P.3d 266 (2009), *review denied*, 168 Wn.2d 1041 (2010). In like manner, a determination of the credibility of witnesses and the weight of the evidence is the exclusive function of the trier of fact, and is not subject to review. *See State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990).

A jury may draw inferences from the evidence so long as those inferences are rationally related to the proven facts. *State v. Jackson*, 112 Wn.2d 867, 875, 774 P.2d 1211 (1989). A rational connection must exist between the initial fact proven and the further fact presumed. *Jackson*, 112 Wn.2d at 875. Moreover, a jury may infer from one fact the existence

of another essential to guilt, if reason and experience support the inference. *Tot v. United States*, 319 U.S. 463, 467, 63 S.Ct. 1241, 87 L.Ed. 1519 (1943). In a sufficiency of the evidence challenge, the court is highly deferential to the decision of the jury. *State v. Davis*, 182 Wn.2d 222, 227, 340 P.3d 820 (2014).

"A person is guilty of possession of a stolen vehicle if he or she possess [possesses] a stolen motor vehicle." RCW 9A.56.068(1) (alteration in original). RCW 9A.56.140(1) defines "possessing stolen property" as

> knowingly to receive, retain, possess, conceal, or dispose of stolen property knowing that it has been stolen and to withhold or appropriate the same to the use of any person other than the true owner or person entitled thereto.

RCW 9A.56.140(1); *State v. Makekau*, 194 Wn. App. 407, 413, 378 P.3d 577 (2016). "Owner" is defined as "a person, other than the actor, who has possession of or any other interest in the property or services involved, and without whose consent the actor has no authority to exert control over the property or services." RCW 9A.56.010(11).

Possession of property may be either actual or constructive. *State v. Callahan*, 77 Wn.2d 27, 29, 459 P.2d 400 (1969). In this case, Mr. Bryant was in actual possession of the vehicle, as he was found driving it. Yet mere possession of stolen property is insufficient to justify a conviction. *State v. Couet*, 71 Wn.2d 773, 775, 430 P.2d 974 (1967); *State v. McPhee*,

156 Wn. App. 44, 62, 230 P.3d 284 (2010). Our high court in *Couet* noted, however, that "[w]hen a person is found in possession of recently stolen property, *slight corroborative evidence* of other inculpatory circumstances tending to show his guilt will support a conviction." 71 Wn.2d at 776 (emphasis added). Other corroborative evidence can consist of a false or improbable explanation or inconsistent explanations and explanations the law enforcement cannot rebut or check. *State v. Rockett*, 6 Wn. App. 399, 402-03, 493 P.2d 321 (1972).

Here, Mr. Bryant was found guilty by a jury. CP 24, RP 153. Prior to deliberation, the jury was given instructions by the court. CP 8-23, RP 128-137. Instruction No. 7, the "to convict" instruction, read,

> To convict the defendant of the crime of possessing a stolen motor vehicle, each of the following elements of the crime must be proved beyond a reasonable doubt:
>
> (1) That on or about November 24, 2016, the defendant knowingly possessed a stolen motor vehicle;
>
> (2) That the defendant acted with knowledge that the motor vehicle had been stolen;
>
> (3) That the defendant withheld or appropriated the motor vehicle to the use of someone other than the true owner or person entitled thereto; and
>
> (4) That any of these acts occurred in the State of Washington.

> If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.
>
> On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to anyone of these elements, then it will be your duty to return a verdict of not guilty.

CP 17. By finding Mr. Bryant guilty, the jury necessarily found each element had been proved beyond a reasonable doubt. Mr. Bryant claims that the evidence was insufficient to meet some of those elements; namely, that he knew the vehicle was stolen or the he acted with knowledge that the vehicle was stolen. *See* Br. of Appellant at 7-8.

A separate jury instruction provided a definition of "knowingly":

> A person knows or acts knowingly or with knowledge with respect to a fact when he or she is aware of that fact. It is not necessary that the person know that the fact is defined by law as being unlawful or an element of a crime.
>
> If a person has information that would lead a reasonable person in the same situation to believe that a fact exists, the jury is permitted but not required to find that he or she acted with knowledge of that fact.
>
> When acting knowingly as to a particular fact is required to establish an element of a crime, the element is also established if a person acts intentionally as to that fact.

CP 18.

The evidence against Mr. Bryant was sufficient for the jury to find him guilty. Mr. Bryant was driving a vehicle reported to be stolen. He gave a key to Officer Brooks, a key pulled from the vehicle's ignition. As

Officer Brooks testified, this key was not a key to an automobile. RP 103. Instead, the key was a house key. RP 102. Operating a motor vehicle with a house key could lead a reasonable person to believe that his or her possession of the vehicle was unlawful. The jury was permitted to find that Mr. Bryant thus acted with knowledge the vehicle was stolen. *See* CP 18.

Additionally, "jurors may 'rely on their personal life experience to evaluate the evidence presented at trial.'" *Long v. Brusco Tug & Barge, Inc.*, 185 Wn.2d 127, 135, 368 P.3d 478 (2016) (quoting *Breckenridge v. Valley Gen. Hosp.*, 150 Wn.2d 197, 199 n. 3, 75 P.3d 944 (2003)). The jury here had the ability to rely on its experience with both house keys and car keys in determining whether Mr. Bryant knew or should have known that the key he used did not belong to a car. The house key was admitted into evidence, and the jury had the opportunity to view it and compare it to the victim's car key. RP 79, 99-102. The jury was justified in concluding that Mr. Bryant possessed a stolen vehicle given the use of a house key to operate a vehicle.

V. CONCLUSION

There was sufficient evidence for the jury to find all of the essential elements of possession of a stolen motor vehicle beyond a reasonable doubt.

The State respectfully requests the trial court affirm the jury's verdict and the court's judgment.

Dated this 11 day of December, 2017.

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION III

STATE OF WASHINGTON, Respondent, v. RANDALL G. BRYANT, Appellant.	NO. 35083-5-III CERTIFICATE OF MAILING

I certify under penalty of perjury under the laws of the State of Washington, that on December 11, 2017, I e-mailed a copy of the Brief of Respondent in this matter, pursuant to the parties' agreement, to:

David Gasch
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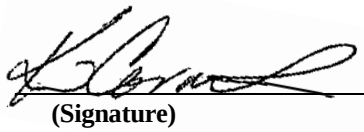
12/11/2017 **(Date)** Spokane, WA **(Place)**  **(Signature)**

SPOKANE COUNTY PROSECUTOR

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